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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Michael Ray Lynam,

10 Petitioner,

11 v.

12 Charles L Ryan, et al.,

13 Respondents.  
14

No. CV-15-00488-TUC-DCB

**ORDER**

15 This matter was referred to Magistrate Judge Bruce G. Macdonald, pursuant to  
16 Rules of Practice for the United States District Court, District of Arizona (Local Rules),  
17 Rule (Civil) 72.1(a). On January 22, 2019, Magistrate Judge Macdonald issued a Report  
18 and Recommendation (R&R). He recommends that the Court deny the Petition filed under  
19 U.S.C. § 2254 for Writ of Habeas Corpus by a person in State custody. The Magistrate  
20 Judge found the Petition was barred by the one-year statute of limitation under the Anti-  
21 terrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2244(d)(1). The  
22 Court accepts and adopts the Magistrate Judge's R&R as the findings of fact and  
23 conclusions of law of this Court and dismisses the Petition as time-barred.

24 **STANDARD OF REVIEW**

25 The duties of the district court in connection with a R&R by a Magistrate Judge are  
26 set forth in Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). The  
27 district court may "accept, reject, or modify, in whole or in part, the findings or  
28 recommendations made by the magistrate judge." Fed.R.Civ.P. 72(b); 28 U.S.C. §

1 636(b)(1). Where the parties object to a R&R, “[a] judge of the [district] court shall make  
2 a *de novo* determination of those portions of the [R&R] to which objection is made.”  
3 *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985) (quoting 28 U.S.C. § 636(b)(1)).

4 This Court's ruling is a *de novo* determination as to those portions of the R&R to  
5 which there are objections. 28 U.S.C. § 636(b)(1)(C); *Wang v. Masaitis*, 416 F.3d 992,  
6 1000 n. 13 (9th Cir.2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th  
7 Cir.2003) (*en banc*). To the extent that no objection has been made, arguments to the  
8 contrary have been waived. Fed. R. Civ. P. 72; see 28 U.S.C. § 636(b)(1) (objections are  
9 waived if they are not filed within fourteen days of service of the R&R), *see also McCall*  
10 *v. Andrus*, 628 F.2d 1185, 1187 (9th Cir. 1980) (failure to object to Magistrate's report  
11 waives right to do so on appeal); Advisory Committee Notes to Fed. R. Civ. P. 72 (citing  
12 *Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974) (when no timely  
13 objection is filed, the court need only satisfy itself that there is no clear error on the face of  
14 the record in order to accept the recommendation)).

15 The parties were sent copies of the R&R and instructed that, pursuant to 28 U.S.C.  
16 § 636(b)(1), they had 14 days to file written objections. *See also*, Fed. R. Civ. P. 72 (party  
17 objecting to the recommended disposition has fourteen (14) days to file specific, written  
18 objections). The Court has considered the Objection filed by the Plaintiff, the Reply filed  
19 by the Defendants, and the parties’ briefs considered by the Magistrate Judge in deciding  
20 the Petition.

## 21 OBJECTIONS

22 In the Petitioner’s Objection, he argues the merits of his Petition. Specifically, he  
23 argues that the Arizona courts got it wrong when they refused to apply *Martinez v. Ryan*,  
24 566 U.S. 1 (2012) to excuse preclusion related to his claim of ineffective assistance of  
25 counsel in his Rule 32 proceeding. Unfortunately, the Petitioner cannot get review here on  
26 the merits of his Petition because, as the Magistrate Judge explained, his Petition is barred  
27 by AEDPA’s the one-year statute of limitation period. (R&R (Doc. 16) at 18-23.)  
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1 The Court agrees with the Magistrate Judge that the Petition is time barred.  
2 Magistrate Judge Macdonald issued a well-reasoned R&R, which explains why as a matter  
3 of law and fact the case is barred by the one-year statute of limitation, including a correct  
4 analysis of the time-bar as tolled in this case.

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6 **CONCLUSION**

7 After *de novo* review of the issues raised in the Plaintiff's Objection, this Court  
8 agrees with the findings of fact and conclusions of law made by the Magistrate Judge in  
9 the R&R for determining the Petition. The Court adopts it, and for the reasons stated in  
10 the R&R, the Court denies Plaintiff's Petition for habeas relief.

11 **Accordingly,**

12 **IT IS ORDERED** that after a full and independent review of the record, in respect  
13 to the Objection, the Magistrate Judge's Report and Recommendation (Doc. 16) is accepted  
14 and adopted as the findings of fact and conclusions of law of this Court.

15 **IT IS FURTHER ORDERED** that Petition Under 28 U.S.C. § 2254 for a Writ of  
16 Habeas Corpus by a Person in State Custody (Doc. 1) is DENIED.

17 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter Judgment  
18 accordingly.

19 **IT IS FURTHER ORDERED** that if Petitioner files an appeal, the Court declines  
20 to issue a certificate of appealability, pursuant to Rule 11(a) of the Rules Governing Section  
21 2254 cases because reasonable jurists would not find the Court's procedural ruling  
22 debatable. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

23 Dated this 12th day of March, 2019.

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27 Honorable David C. Bury  
28 United States District Judge